IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.82 OF 2006
IN
SUMMARY SUIT NO.3175 OF 2003

National Horticulture Board. ...Plaintiff.
Vs.
ICICI Bank Ltd. ...Defendant.

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Ms.Shrivastava i/b. Consulta Juris for the Plaintiff.
Mr.Tapan Deshpande i/b. A. & Mangaldas for the First Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The suit has been instituted against the First Defendant on a Bank Guarantee dated 8th June 1999 (Exh.A). The terms of the Bank Guarantee provide that the guarantee was executed by the First Defendant for guaranteeing compliance of the terms and conditions of the contract regarding creation of mortgage security and repayment of the loan in case, a mortgage is not created. In the affidavit in reply, in paragraph 3, the First Defendant has averred that as a matter of fact, in 1999, the Second Defendant has created a mortgage of his immovable property upon which the liability of the Second Defendant to provide a Bank Guarantee came to an end. Prima facie, the terms of the Bank Guarantee would show that the guarantee was to be enforceable until the

creation of a security by way of mortgage and, in case, mortgage is not created, towards repayment of the loan. There is no rejoinder to the averment contained in the reply to the effect that the mortgage was in fact, created in favour of the Plaintiff. Hence, the defence that the Bank Guarantee on its own tenor stood extinguished raises a triable issue. Secondly, it has been stated in paragraph 10 of the reply that the First Defendant was not a signatory to the Consent Terms that were arrived at between the Plaintiff and the Second Defendant on 7th September 1999 before this Court. The defence, therefore, that the First Defendant would not be bound by the Consent Terms which were recorded by the Court on 7th September 1999 raises a triable issue. Finally, the third defence is that the Bank Guarantee was invoked on 2nd June 1999 and the suit which was instituted on 28th August 2003 is barred by limitation. The defence that the suit is barred by law of limitation raises a triable issue.

Unconditional leave to defend the suit is granted to the First Defendant.

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